

Law360, New York (September 26, 2017, 6:17 PM EDT) -- A New York federal judge agreed Monday to allow the Second Circuit to weigh in on whether he rightly decertified a class of Chipotle workers who allege they were denied overtime and classified as managerial workers even though they spent most of their time on service tasks.

U.S. District Judge Andrew L. Carter granted the Chipotle Mexican Grill Inc. apprentices' request for his certification of the Second Circuit's interlocutory review of his March 29 decertification order. The judge found that the apprentices met their burden of demonstrating there is a need for a review of whether a conflict exists in the circuit between Federal Rules of Civil Procedure Rule 23 standards for class certification and Fair Labor Standards Act Section 216(b) standards for certification of a collective action.

"The court disagrees with plaintiffs' argument that there is a 'rift' between the Rule 23 and Section 216(b) standards," Judge Carter said. "The court's memorandum and order made clear that its Section 216(b) analysis considered separate factors from its Rule 23 class certification analysis. Nonetheless, plaintiffs' assertions do point to controlling questions of law which may have substantial grounds for a difference of opinion."

Chipotle [on March 29 won its bid](#) to decertify the overtime collective action consisting of more than 500 management trainees, with Judge Carter ruling that too many differences existed in the workers' ability to exert managerial authority for them to proceed as a class. In decertifying the class of so-called apprentices — employees in temporary positions while they train to be general managers of new restaurant locations — the judge found that the responsibilities of 516 workers who opted into the suit varied widely and didn't match with seven named plaintiffs.

The judge also denied the trainee plaintiffs' request to certify six classes of Chipotle apprentices under state law in Colorado, Illinois, Missouri, New York, North Carolina and Washington during various time periods.

The plaintiffs subsequently asked the Second Circuit for an interlocutory review. The appellate court granted the request on July 18, stating that "an immediate appeal is warranted," according to Judge Carter's Monday ruling.

Initially launched in November 2012, the trainees' suit accuses the burrito restaurant chain of illegally denying its apprentices overtime and classifying them as managerial workers even though they spent most of their time on tasks such as filling orders and operating cash registers. Chipotle has argued that its employees meet the legal standards of being part of management and enjoy the salaries and benefits that come with such positions, according to court documents.

The court certified the collective action [in June 2013](#) after limited discovery, leading the 516 opt-in plaintiffs to enter the action, which alleges violations of the Fair Labor Standards Act as well as various state labor laws, according to court documents.

In granting Chipotle's bid to decertify the class, Judge Carter noted that the opt-in apprentices offered conflicting testimony as to whether they performed managerial tasks like making personnel decisions,

disciplining workers and independently creating schedules.

The judge also noted that structural differences in the way Chipotle stores operated in different areas affected the amount of time the apprentices spent as the highest-ranking employee on site and the amount of time they spent performing managerial duties.

“A comparison of the named plaintiffs with the opt-ins shows that the apprentices had vastly different levels and amounts of authority in exercising managerial tasks,” Judge Carter said, noting that the hundreds of opt-in plaintiffs worked at 37 different store locations with varying managerial structures.

The disparate accounts from individual apprentices sunk their ability to show that common issues predominated over any questions affecting only individual class members, the judge said.

As a result of the ruling, the claims of the opt-in plaintiffs were dismissed without prejudice.

Counsel for both parties were not immediately available for comment on Tuesday.

The plaintiffs are represented by Justin Swartz and Melissa L. Stewart of [Outten & Golden LLP](#), Brian Schaffer and Frank Mazzaferro of Fitapelli & Schaffer LLP and Gregg Shavitz of the [Shavitz Law Group PA](#).

Chipotle is represented by Brian Murphy, Lisa Lewis and Richard Simmons of [Sheppard Mullin Richter & Hampton LLP](#) and Bruce Montoya, John Shunk and Lou Grossman of [Messner & Reeves LLP](#).

The case is Scott v. [Chipotle Mexican Grill Inc.](#), case number [1:12-cv-08333](#), in the U.S. District Court for the Southern District of New York.